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We regret to record the recent death of the Honorable Charles H. Simonton, judge of the Fourth Judicial Circuit. Having served for several years as United States District Judge for South Carolina, he was appointed to the circuit judgeship by President Cleveland. His entire service has commended him to the respect and affection of the bar of the circuit, while his judicial work has become part of the jurisprudence of the nation.

The Death of Judge Simonton.

The President has appointed as his successor Hon. Jeter C. Pritchard, formerly a member of the United States Senate from North Carolina, but more recently a member of the Supreme Court of the District of Columbia. Professionally Judge Pritchard is not widely known throughout the circuit, but he is in the prime of life and is said to be hard-working and clear-headed. His conduct of the recent trials in Washington of the parties accused of fraud in connection with the Postoffice Department has been widely commended.

Judge Pritchard.

The communication of Mr. A. W. Patterson, in this number, calls attention to the serious condition of our statute law in regard to the proof of notice of the dishonor of negotiable instruments. Section 2850 of the Code has been, as Mr. Patterson says, a part of our commercial and statute law since 1829, and no one can question its wisdom, and, indeed, its necessity. But it has been repealed outright and no substitute has been provided.

Hasty Legislation.

The last General Assembly has by the Act of March 12, 1904 (Acts 1904, p. 250), re-introduced confusion into the law concerning public holidays. By an act approved April 2, 1902 (Acts 1901-2, p. 581), section 2844 of the Code was amended so as to include Decoration Day, May thirtieth, among the public holi-

days, but a serious question having arisen as to when instruments maturing on the enumerated holidays, *when they should fall on Friday,* should be presentable for payment, the legislature by three Acts approved respectively July 28 and 29, 1902 (Acts 1902-3-4, pp. 18 and 24), and drawn after careful consideration of all the statutes in point, not only amended the Act of April 2, 1902, but by separate statutes provided for the *casus* suggested. The Act of March 12, 1904, *makes no mention of any of these Acts of July,* 1902, but amends section 2844 so as to make it read in all respects like the Act of April 2, 1902. The single object of the statute was to make the nineteenth day of January, which up to that time had been designated as "Lee's birthday," to be designated thereafter as "Lee-Jackson day," and its draughtsman in his pursuit of the sentiment of the question, overlooked entirely the condition of the law and the more vital and important interests which his hasty legislation might imperil. There should be no room for any doubt as to the exact day upon which negotiable paper matures, for unless presented and, if dishonord, protested on the proper date, the endorsers may escape all liability. Fortunately it appears that according to the calendar, none of the designated holidays will fall on Friday for three or more years, and in the meantime legislative intervention can be sought. These two instances, however, are of themselves sufficient to show the blind way in which our legislators have been groping. What will be the next case discovered?

Free Passengers—Differing Views.

In *Northern Pacific Railway Company* v. *Adams,* 24 Sup. Ct., 408, the United States Supreme Court has definitely settled in the negative, as far as the federal courts are concerned, the question of the liability of a railway company for the death of or injury to a passenger travelling upon a free pass, containing a stipulation that the railway company shall not be liable for injuries arising to the user from the negligence of the carrier's agents or otherwise. In *Norfolk & Western Railway Company* v. *Tanner,* 100 Va. 397, the converse of the proposition was affirmed. A camparison of the two cases is most interesting. Thus, in the opinion in the latter case, great stress is laid upon *New York Central Railway Co.* v.

Lockwood, 17 Wall. 357, as strongly persuasive of, if not controlling the judgment, while in the former, the *Lockwood* case is with equal care cited and distinguished. The efforts of the railway companies to remove such cases to the federal courts will now be redoubled in states whose courts take the view adopted in the Tanner case. To both sides of such a question, the discussion of the law of the right of a non-resident to remove, where a resident of the same state as plaintiff is joined as a co-defendant, contained in *Shaffer* v. *Union Brick Company,* and *Gustafson* v. *Chicago etc. Railway Company, ante,* Notes of Cases, will be found to possess great practical interest. We may add that the federal Supreme Court emphasized its ruling in the *Adams* case, *supra,* by carrying it a step farther in *Boering* v. *Chesapeake Beach Railway Company,* 24 Sup. Ct. 515, decided a month later—the ruling being, briefly, that the stipulation is binding upon the person accepting the privilege, although notice of it may not have been brought home to him. The court cites *Muldoon* v. *Seattle City R. Co.,* 10 Wash. 311, 38 Pac. 995, and *Duncan* v. *Maine &c. Railway Co.,* 113 Fed. 508, quoting with approval from the latter the following: "The result we have reached conforms the law applicable to the present issue to that moral sense which justly holds those who accept gratuities and acts of hospitality to perform the conditions on which they are granted."

Contempt by Wholesale.

Our brethren in North Carolina never do things by halves. They go the limit, and the result at times smacks of tragi-comedy which is always interesting. We regret to learn through the daily press that the relations between the bench and the bar of Robeson County in that state are strained—to the point, indeed, of threats of fine and imprisonment on the one hand and of impeachment on the other. Naturally our attention is aroused. It appears that Judge Robert B. Peebles, concerning whose peculiar judicial methods in the Haywood murder trial, we had something to say some time age (9 Va. L. R. 567) has become objectionable to the bar because of his alleged discourteous and overbearing treatment of its members. Shortly before the first day of the last term of the Robeson county court, the attorneys practising at its bar met and declined to set

any cases for trial during that term, and, true to their resolve, when the court convened for the term, there was nothing before the judgment-seat but empty benches.

Whereupon, it being by this time the court's move, Judge Peebles announced that within two weeks he would have all the members of that bar before him upon a rule against each to show cause why he should not be fined and committed for contempt.

We find it difficult to treat the subject seriously. Perhaps we would find it easier were we a member of the bar in question, facing a dungeon cell. But we cannot see wherein the contempt lies. If opposing counsel in a case agree not to try it at a certain term, it goes over, and there's an end of it for the time. It would be difficult to make a Virginia circuit judge angry by relieving him from the calling of his docket. He would, at this season especially, promptly adjourn the court for the term and, with an expression of countenance which would indicate that the joke was at least not on him, hie him away with a jointed rod for other game than lawyers, to enjoy leisure where he looked for work.

As a volunteer *amicus curiae,* we would advise the irate judge to make haste slowly in this instance. He is not standing for a principle. Granting that he has just cause for resentment, this is not his remedy and he will be more than apt, if he insists upon taking up the poker, to lay hold of its warm end. The spirit of fraternity among lawyers is well developed, and where they make common cause they are more than apt to succeed. We suggest to this sensitive official that he at once descend from his high horse—get down to other methods to elicit rather than enforce respect, and ere long the unpleasant incident will have been forgotten by all in the interest which ever attaches to the orderly administration of justice.

The Point of View.

We note from a recent special to the *New York Times* that the members of the bar of the District of Columbia are "angry" at the President for having selected as the successor of Judge Pritchard on the District bench, another non-resident of the District, Mr. Wendell Phillips Stafford, of Vermont. They complain that out of the nine judges of the District, only two are residents. They even went so far

as to threaten to hold an indignation meeting to protest against the Stafford appointment, but for prudential reasons, *e. g.*, difficulty in finding a volunteer to bell the cat, they adopted instead a resolution asking the President to appoint, in the future, residents of Washington to at least one-half of the vacancies that might occur on the District bench.

While we consider this a most natural sentiment, we cannot refrain from making it the text of a brief reminiscence. None can tell the politics of this journal from its pages, for it has no politics. We consider any intimation of the kind as much out of place here as it would be from the bench. Judicial notice is taken of history, however, and this action brings back to us the condition of things which obtained throughout the South all through the days of Reconstruction, when Northern, and it may be, Washington lawyers, were made judges of our supreme and inferior courts. A third of a century has passed away, but we shall always have photographed upon our memory the appearance of the Supreme Court of South Carolina in 1874—its Chief Justice, Moses, a South Carolinian; an Associate Justice, one Willard, of New York, and another Associate Justice, a negro by the name of Wright. There were protests then, also, against the system of satrapy which, having possessed itself of the executive and legislative functions by the right of might and the disfranchisement of character and intelligence, did not hesitate to lay hands upon the judicial power also and administer justice through aliens of at best doubtful character, through the members of an inferior and recently liberated race, and through still another class who were native born but, from treason to their own flesh and blood for a price paid or hoped for, were more debased than either of the others.

But, of course, that is another story. We do not hesitate, however, to express our entire appreciation of the sentiment of the bar of the District of Columbia. Put in homely and colloquial phrase, it wants no carpet-baggers. It modestly asks for half of the appointments—it should have all. The inherent equity of home rule is doubtless just as apparent to the citizens of that District—that anomaly upon our national map, where all are taxed but none may vote—and they do right to assert themselves. Their bar contains the names of many distinguished men, and the selection of the magistrates for the District should be made only from

that list. If the rule worked both ways, there might be some logic in the present condition, but were a Washington lawyer to be appointed, let us say, to a New York federal judgeship, a wave of "righteous indignation" would arise that would imperil the administration, and the next platform of the opposite political party would "view with alarm" this blow at the "great fundamental principles of local self-government."

Curious, isn't it, even in these days of piping peace, how much depends upon whose ox is gored?